

**Juvenile Cases Decided by the  
North Carolina Court of Appeals**  
August 16, 2011  
*Delinquency*

Delinquency: order to pay restitution

- An order requiring a juvenile to pay restitution must include findings as to whether the requirement is in the juvenile's best interest and whether it is fair to the juvenile.

**In re D.A.Q., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (August 16, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzI1LTEucGRm>

**Facts:** The juvenile was adjudicated delinquent after admitting two counts of breaking and entering a motor vehicle. At disposition he was ordered to pay restitution. At a supplemental hearing the court set the amount of restitution at \$242.58, after finding that (i) the victim had injuries in the amount of \$265.00; (ii) another juvenile involved in the same incident had been ordered to pay restitution for this and other incidents and was ordered to pay only \$22.52 to the victim in this case because his restitution was prorated among victims; (iii) ordering the juvenile in this case to pay the same amount as the other juvenile would be unfair to the victim; (iv) the juvenile was able to pay the amount ordered completely through a community service program; and (v) the amount was reasonable.

**Held:** Reversed and remanded.

1. When restitution is ordered, the record and appropriate findings must demonstrate that
  - a. requiring the juvenile to pay restitution is in the juvenile's best interest, and
  - b. the order to pay restitution and the amount of restitution are fair to the juvenile and reasonable.
2. In ordering a juvenile to pay restitution, compensation and fairness to the victim may not be the court's primary concern.
3. The court could not order that the juvenile and the other juvenile who participated were jointly and severally liable because the other juvenile's case was not before the court.
4. An order for joint and several liability would have meant that both juveniles were liable for the full amount and would have been a worse result for the juvenile than the amount ordered.

Delinquency: sufficiency of petition; evidence from ‘stop and frisk’

- An allegation of larceny from a victim other than a person must include an allegation that the victim is a legal entity capable of owning property.
- An officer may not physically search a person for evidence of his identity during a *Terry* stop and frisk.

**In re D.B., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (August 16, 2011).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNDc2LTEucGRm>

**Facts:** After discovery of a break-in and theft at a golf club, an officer stopped and frisked the juvenile based on a description given by a witness who reported seeing someone running from the golf course. The juvenile refused to identify himself or respond when asked whether he had identification. The officer felt something in the juvenile’s shirt pocket and, thinking it could be an identification card, removed it. The object was a credit card that had been reported stolen. The juvenile was adjudicated on three charges: (i) felony breaking and entering; (ii) felony larceny pursuant to breaking and entering; and (iii) misdemeanor possession of stolen property.

**Held:** Affirmed in part; vacated in part; reversed and remanded in part.

1. The petition alleging larceny from the Crossings Golf Club should have been dismissed for lack of subject matter jurisdiction because it did not allege that the club was a legal entity capable of owning property.
2. Evidence of the credit card seized from the juvenile should have been excluded because the search pursuant to which the officer found it exceeded the permissible scope of a *Terry* frisk and was unconstitutional. [*Terry v. Ohio*, 392 U.S. 1 (1968).]
  - a. A frisk is for protective purposes and is limited to determining whether the person has a weapon.
  - b. If a proper frisk necessarily reveals evidence of a crime or contraband, the officer may seize it. Here the ‘stop and frisk’ was legal, but discovery of the credit card resulted from an impermissible search.
  - c. Conducting a warrantless search solely to discover a person’s identity is not permitted.
3. Because the trial court’s order incorrectly stated that the juvenile admitted the alleged offenses, remand to correct that part of the order was appropriate.

Appellate court opinions can be found at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>

Earlier case summaries can be found at <http://www.sog.unc.edu/node/513>



**Janet Mason**

School of Government  
The University of North Carolina at Chapel Hill  
Campus Box 3330, Knapp-Sanders Building  
Chapel Hill, NC 27599-3330  
T: 919.966.4246 F: 919.962.2706  
[mason@sog.unc.edu](mailto:mason@sog.unc.edu)